



Qwest
1801 California Street, 49th Floor
Denver, Colorado 80202
Phone 303 672-2859
Facsimile 303 295-7049

Kathryn Marie Krause
Senior Attorney

EX PARTE

December 12, 2002

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: *In the Matter of Revision of the Commission's Rules to Ensure Compatibility
With Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102

Response to AT&T Wireless Services Letter to Blaise Scinto, dated December 2,
2002

Dear Ms. Dortch:

Attached is an *Ex Parte* served today on Ms. Blaise Scinto, Deputy Chief, Policy Division, Wireless Telecommunications Bureau, in CC Docket No. 94-102, in response to AT&T Wireless Services December 2, 2002 letter.

In accordance with FCC Rule 47 C.F.R. § 1.49(f), this *Ex Parte* is being filed electronically via the Commission's Electronic Comment Filing System for inclusion in the public record of the above-referenced proceeding pursuant to FCC Rule 47 C.F.R. § 1.1206(b)(1).

/s/ Kathryn Marie Krause



Qwest
1801 California Street, 49th Floor
Denver, Colorado 80202
Phone 303 672-2859
Facsimile 303 295-7049

Kathryn Marie Krause
Senior Attorney

EX PARTE

December 12, 2002

Blaise Scinto
Deputy Chief, Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Via e-mail bscinto@fcc.gov

Re: *In the Matter of Revision of the Commission's Rules to Ensure Compatibility
With Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102

Response to AT&T Wireless Services Letter to Blaise Scinto, dated December 2, 2002

Dear Ms. Scinto:

On December 6, 2002, AT&T Wireless Service, Inc. ("AWS") filed a letter from Douglas I. Brandon, Vice President, to your attention ("AWS Letter"). The purpose of that letter was to respond to your e-mail inquiring whether AWS and Qwest were aware of filings made by each company regarding wireless E911 Phase II deployment.¹

Qwest was gratified to see that, on behalf of AWS, Mr. Brandon essentially concedes the accuracy of Qwest's factual recitation of events regarding Qwest's local exchange company's ("LEC") participation in wireless Phase II deployments. AWS' letter makes obvious that the facts regarding recent wireless Phase II deployment activities, between AWS and Qwest, are not "in dispute," but rather the conclusions to be drawn from those facts. AWS would have the Commission draw negative conclusions, e.g., that Qwest is dilatory in working through its tariff offerings and that Qwest's delays and charges were the major contributing factors to Public Service Answering Points' ("PSAP") reticence or reluctance to proceed with wireless Phase II implementation in Qwest's territory. These proffered conclusions are meritless.

AWS' advocacy ignores commonplace regulatory realities and business decision-making. For example, AWS complains about Qwest's tariffing activities and filings. Yet it is no surprise to this Commission that wireless Phase II service to PSAPs will be offered through LEC tariffs, in many instances.² Qwest confirmed this expectation when it notified the Commission that services to PSAPs

¹ Qwest communicated with Mr. Barry Ohlson *via* letter dated Nov. 27, 2002. AWS filed a second Interim Report on Dec. 2, 2002. *See* Letter dated Dec. 2, 2002 to Ms. Marlene H. Dortch, Federal Communications Commission from Douglas I. Brandon, AT&T Wireless ("December, 2002 Report").

² "The service between the LEC and the PSAP is contractual in nature and paid by the PSAP typically through a special tariff filed with the State public utility commission." *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Second Memorandum Opinion and Order*, 14 FCC Rcd. 20850, 20887 ¶ 94 (1999) ("Second MO&O").

would “be offered through Individual Case Basis [(“ICB”)] pricing, *unless required otherwise by a state regulatory authority.*”³ Qwest utilizes ICB pricing when appropriate. But there are circumstances -- such as in Oregon -- where tariffing is required. Moreover, it is also fairly commonplace for carrier tariff filings in state jurisdictions to be challenged. Quite often challenges occur because of differences of opinion regarding what costs a carrier is properly entitled to include and recover, and how those costs affect the proposed charge for the service. This kind of disagreement between proponents and opponents of LEC tariffs -- capably resolved through well-recognized and long-standing state regulatory processes -- does not usually “cause” (using AWS’ words)⁴ a potential purchaser to forego future purchases. And most importantly, a dispute over the terms of a LEC tariff does not prove that the tariff is unreasonable.

Even assuming arguendo that a PSAP (in this case, the Oregon Emergency Management (“OEM”) office) decided not to purchase E911 service for pricing reasons, that decision does not remotely constitute record evidence to support a regulatory finding that Qwest’s pricing of its Phase II-implementing services was unreasonable or unwarranted or conflicted with the public interest. The Oregon tariff was filed on October 21, 2002. As with all state tariff filings for these services, the PSAPs - - as well as any other industry participant -- have had the opportunity to comment on the tariffs.⁵ The Oregon tariff filing was not disputed by any entity including, notably, the OEM; and the tariff became effective on November 21, 2002. With limited exceptions, Qwest expects its regulatory activities regarding Phase II implementations to be completed throughout its region in 2002. The exceptions will be completed early (in January) of 2003.⁶

AWS’ criticisms of Qwest, then, are aimed at the wrong stakeholder in the wireless Phase II initiative. It is the PSAP, not the LEC, who ultimately must order and pay for the upgrades on the PSAP’s side of the King County demarcation point.⁷ And it is with the PSAPs where AWS is

³ See Letter from Kathryn M. Krause, Qwest Corporation, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, filed Aug. 28, 2002, CC Docket No. 94-102, Attachment at ¶ 4 (emphasis added).

⁴ See AWS Letter at 2 (Qwest charges “caused PSAPs to rethink their decision to request Phase II E911 services from AWS . . .”).

⁵ Cf. *Second MO&O*, 14 FCC Rcd. at 20889 ¶ 100 (finding that “[LEC] contract disputes described by the [wireless] carriers also may be resolved under existing State and federal rules if mutual agreement is not achieved.”).

⁶ Utah and Minnesota offerings are expected to become final in January.

⁷ AWS in fact offers no evidence of causation between Qwest’s actions and PSAP inactivity with respect to wireless Phase II, even with respect to the OEM office in Oregon. AWS concedes that the OEM “suspended its participation in the Phase II Trial,” after “[having] been an enthusiastic leader in E911 implementation.” AWS Letter at 2. And it implies that the OEM’s suspension decision was the result of “[Qwest’s] tentative charges.” *Id.* The reason the OEM withdrew from trial discussions with AWS and Qwest is a matter of speculation. But even were AWS’ assertions correct they would also be immaterial at this point. While the OEM has advised Qwest of its dissatisfaction with Qwest’s wireless 911/E911 charges with respect to both Phase I and Phase II, the OEM did not participate in the state tariff proceeding involving Qwest’s Phase II tariff, therefore failing to dispute the content of the tariff or associated charges.

encountering situations where it is expending human and monetary resources⁸ in the face of PSAPs not currently expressing a willingness to purchase such services. While unfortunate, the situation is not altogether surprising.

Carriers, such as Qwest, are working diligently to deploy supporting services for wireless Phase II 911/E911, and Qwest has no reason to doubt that wireless carriers are working diligently as well. While all of these efforts are being done in good faith, there are economic realities facing the PSAP community such that, even with the most reasonable LEC offerings, wireless Phase II deployments are a challenge for PSAPs due in large part to what Dale Hatfield aptly described as “PSAP fatigue and funding issues.”⁹ The PSAPs are going to have to address these issues with their governing and financial constituents. In Qwest’s opinion, until PSAPs have a better understanding of the technical and financial consequences of deploying wireless Phase II, and have the resources to purchase the necessary supporting services, the best intentions of all parties will be tempered by the formidable challenges facing PSAPs with limited resources and capabilities.

Moving away from the specific Oregon Phase II environment, AWS also acknowledges that Qwest has offered to trial its implementing Phase II services with PSAPs in jurisdictions other than Oregon.¹⁰ AWS then proceeds to explain why it was reasonable, from AWS’ business perspective, for it to refuse those trials. Qwest does not dispute these assertions. Yet despite the fact that AWS -- simultaneously -- promotes the reasonableness of its business conduct and criticizes Qwest’s business decisions regarding the timing and content of its tariff offering, AWS does not and cannot seriously dispute the straightforward business proposition at issue here: that Qwest must be paid for the services it provides to the PSAP.

In closing, Qwest wants it clearly understood that it in no way disputes AWS’ good faith efforts to deploy Phase II service to its customers. But it is equally important to understand that Qwest is not a prime mover in frustrating those efforts. The relevant facts here appear undisputed -- the PSAP in Oregon is not interested in obtaining from Qwest the facilities and services necessary for Phase II deployment at prices determined appropriate before the Oregon Public Utilities Commission. The Commission’s rules and precedent explicitly provide that if the PSAP is not willing to pay for or has not otherwise ordered the necessary services and facilities from the LEC, the wireless carrier has no E911 deployment obligations.¹¹

⁸ To the extent that AWS has been forced to deploy resources notwithstanding OEM’s non-readiness (*see* AWS Letter at 3), this fact has nothing to do with Qwest’s tariffs but instead is a function of the Commission’s rules, which require that wireless carriers begin E911 deployment irrespective of *actual* PSAP readiness. *See* 47 C.F.R. § 20.18(j)(4)(vi).

⁹ *See* Dale Hatfield, A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services, filed Oct. 15, 2002, WT Docket No. 02-46 at 29.

¹⁰ AWS Letter at 2.

¹¹ *See* 47 C.F.R. § 20.18(j) (PSAP must be able to “demonstrate that it has made a timely request to the appropriate LEC for the necessary trunking and other facilities”); *In the Matter of Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems -- Petition of City of Richardson, Texas, Order*, 16 FCC Rcd. 18982, 18986-87 ¶¶ 16-17 (2001), *aff’d in relevant part on recon., Order on Reconsideration*, CC Docket No. 94-102, FCC 02-318, at App. B, rel. Nov. 26, 2002 (recodifying PSAP documentation requirements at 47 C.F.R. § 20.18(j)(2)); *see also* Letter from

Thus, the only conclusion necessary for the Commission to put this matter to rest is that neither Qwest nor, for that matter, AWS, is obligated to deploy Phase II facilities for the Oregon PSAP.¹²

In light of Qwest's and AWS' concurrence on the relevant factual and (Qwest believes) legal issues associated with wireless Phase II deployments, Qwest sees no public interest benefit in continuing these kinds of *seriatim ex partes* where Qwest seeks to rebut unfounded and unproven allegations regarding its Phase II deployment efforts. Attempts to have the "last word" or to repeatedly be called upon to address complicated deployment situations in limited, uncomplicated text does nothing to advance the Commission's objectives with respect to wireless Phase II E911 deployment. Rather such attempts merely consume precious resources. Should the Commission or its staff be interested in discussing with Qwest its Phase II tariff activities or its ongoing deployment efforts, Qwest would be happy to make knowledgeable Qwest personnel available at the Commission's convenience. Should you wish to discuss this matter further, please contact me at the above telephone number or alternatively Cronan O'Connell at 202-429-3121.

Respectfully,

/s/

Kathryn Marie Krause

cc:	James Schlichting	jschlich@fcc.gov
	Barry Ohlson	bohlson@fcc.gov
	Patrick Forster	pforster@fcc.gov
	Daniel Grosh	dgrosh@fcc.gov
	Jennifer Salhus	jsalhus@fcc.gov
	Joel Taubenblatt	jtaubenb@fcc.gov
	Jennifer Tomchin	jtomchin@fcc.gov
	Cronan O'Connell	cqoconn@qwest.com
	Douglas I. Brandon	doug.brandon@attws.com
	Peter White	peter.white@attws.com

Thomas J. Sugrue to Kathleen B. Levitz, *et al.*, CC Docket No. 94-102, dated Oct. 28, 2002 at 3-4 (discussing "steps necessary for a valid and timely PSAP request" in original *Richardson* decision).

¹² AWS Letter at 3 ("Qwest is correct in observing that 'a wireless carrier's Phase II obligations are not triggered if a PSAP is unwilling to pay the LEC for the necessary services and upgrades'").